



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: April 3, 2008

CBCA 19, 864

ANGEL MENENDEZ ENVIRONMENTAL SERVICES, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Laurence Schor and Dennis C. Ehlers of McManus, Schor, Asmar & Darden, LLP, Washington, DC, counsel for Appellant.

Stacey North Willis, Office of the General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **VERGILIO**, and **WALTERS**.

WALTERS, Board Judge.

Appellant, Angel Menendez Environmental Services, Inc. (AMES) and respondent, the Department of Veterans Affairs (VA), were parties to contract V101DC0211 (contract) for the design and construction of the New Mental Health Outpatient Facility Building at the VA Medical Center, Tucson, Arizona (a so-called “design-build” contract).

VA awarded this contract to AMES on September 29, 2005, in the amount of \$11,200,000. The instant appeals arose from the VA’s default termination of the contract and the contracting officer’s subsequent denial of AMES’ termination claim in the amount of “\$747,278.54 plus interest under the Prompt Payment Act and Contract Disputes Act.”

On March 12, 2008, the parties filed with the Board a settlement agreement together with a joint motion for judgment on the settlement agreement and stipulation of award. The settlement agreement calls for the VA to convert the default termination to one for the convenience of the Government, for the entry of judgment in favor of the appellant in the amount of \$410,000, and for the payment of said amount to AMES from the permanent indefinite judgment fund, 31 U.S.C. § 1304. The agreement further provides for the VA to give AMES no less than a “neutral” performance rating or its equivalent. The agreement also states that “[a]s required by Board Rule 25(b), the parties agree that they will not seek reconsideration of, or relief from, the Board’s decision or appeal the decision.” To this end, the joint motion is also accompanied by a standard Appellant/Applicant Certificate of Finality form dated March 6, 2008, executed by AMES’ vice president.

Although the joint motion had requested that the Board “retain jurisdiction to enforce the Settlement Agreement,” the parties have advised the Board that the VA has since provided a performance rating for AMES in compliance with the terms of the settlement agreement and that they therefore no longer are requesting the Board’s retention of jurisdiction.

Decision

Accordingly, the appeals are **GRANTED IN PART**. In accordance with the parties’ joint stipulation, the Board rules that the default termination at issue be converted to one for the convenience of the Government and awards appellant the sum of \$410,000 inclusive of interest under the Contract Disputes Act of 1978, 41 U.S.C. § 611 (2000), to be paid from the permanent indefinite judgment fund, 31 U.S.C. § 1304.

RICHARD C. WALTERS
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JOSEPH A. VERGILIO
Board Judge